MONTANA LEGISLATIVE HISTORY

Chapter 194 1989

Bill H 189 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 24	✓ C	Hearing Date(s)	Mar 06	✓ C
		C			C
		C			C
		C			C
Date Out	Jan 24	✓ C		Mar 06	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/26	ADVERSE COMMITTEE REPORT ADOPTED	86	7
1/29	FISCAL NOTE PRINTED		

HB 188 INTRODUCED BY ROTH
REFUND 1988 SURTAX ON INDIVIDUAL INCOME TAX

1/14	INTRODUCED		
1/16	REFERRED TO TAXATION		
1/17	FISCAL NOTE REQUESTED		
1/23	FISCAL NOTE RECEIVED		
1/24	FISCAL NOTE PRINTED		
	DIED IN COMMITTEE		

HB 189 INTRODUCED BY RICE, ET AL.
INCREASE SENTENCE FOR CERTAIN INCEST OFFENDERS

1/14	INTRODUCED		
1/16	REFERRED TO JUDICIARY		
1/24	HEARING		
1/24	COMMITTEE REPORT--BILL PASSED		
1/26	2ND READING PASSED	92	1
1/28	3RD READING PASSED	93	0
	TRANSMITTED TO SENATE		
1/30	REFERRED TO JUDICIARY		
3/06	HEARING		
3/06	COMMITTEE REPORT--BILL CONCURRED		
3/07	2ND READING CONCURRED	50	0
3/09	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/14	SIGNED BY SPEAKER		
3/15	SIGNED BY PRESIDENT		
3/15	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 174 EFFECTIVE DATE: 10/01/89		

HB 190 INTRODUCED BY HANSON, M.
REVISE MONTANA PESTICIDES ACT
BY REQUEST OF DEPARTMENT OF AGRICULTURE

1/16	INTRODUCED		
1/16	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
1/17	FISCAL NOTE REQUESTED		
1/20	HEARING		
1/21	COMMITTEE REPORT--BILL PASSED		
1/23	FISCAL NOTE RECEIVED		
1/24	2ND READING PASSED	56	43
1/24	FISCAL NOTE PRINTED		
1/25	TAKEN FROM ENGROSSING		
1/25	REREFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
2/11	COMMITTEE REPORT--BILL PASSED		
2/14	2ND READING PASSED	87	5
2/16	3RD READING PASSED	91	5
	TRANSMITTED TO SENATE		
2/17	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
3/03	HEARING		
3/04	COMMITTEE REPORT--BILL CONCURRED		
3/06	2ND READING CONCURRED	50	0

HOUSE BILL NO. 189

INTRODUCED BY RICE, MERCER, ELLIOTT, DARKO, MAZUREK

IN THE HOUSE

JANUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 16, 1989	FIRST READING.
JANUARY 24, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 25, 1989	PRINTING REPORT.
JANUARY 26, 1989	SECOND READING, DO PASS.
JANUARY 27, 1989	ENGROSSING REPORT.
JANUARY 28, 1989	THIRD READING, PASSED. AYES, 93; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 30, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 6, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 7, 1989	SECOND READING, CONCURRED IN.
MARCH 9, 1989	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 10, 1989 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 189

INTRODUCED BY Lisa Mercer Elliott Marks Mangan

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE SENTENCE FOR THE CRIME OF INCEST IF THE OFFENDER INFLICTS BODILY INJURY UPON ANYONE IN THE COURSE OF COMMITTING THE CRIME OR IF THE VICTIM IS UNDER 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE VICTIM; AND AMENDING SECTION 45-5-507, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-507, MCA, is amended to read:

"**45-5-507. Incest.** (1) A person commits the offense of incest if he knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact as defined in 45-2-101 with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to herein include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.

~~(4)~~(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

-End-

LC 0569/01

 INTRODUCED BILL HB 189

act. If it is not an accident, it isn't under the act.

Closing by Sponsor: Rep. Smith agreed that as he pointed out before, there are some language problems with the bill that he hopes can be worked out in sub-committee.

HEARING ON HOUSE BILL 189

Presentation and Opening Statement by Sponsor:

Rep. Rice stated that HB 189 is a bill to increase the sentence for certain types of incest crimes. Incest, as defined, includes a whole range of sexual conduct between relatives. This bill is focusing on a narrow situation in which the victim is under 16 years of age and the offender is 3 or more years older than the victim, or if the offender has inflicted bodily harm. The reason for increasing the penalties for that particular type of incest crime is that presently in the State of Montana, the penalty for incest is actually less than the penalty for sexual assault. When incest crimes arise, county attorneys are electing to charge these people with sexual assault instead of charging them under the incest statutes even though that is the fact or the event that has occurred. Rep. Rice feels that it should be brought onto the table and charged as incest and the penalty should be the equivalent of the sexual assault penalty.

Testifying Proponents and Who They Represent:

John Connor, Dept. Justice, County Prosecutors Service Bureau

Proponent Testimony:

John Connor stated that the present statute with respect to the penalty under incest, was a carryover from the old law. The ten year penalty simply does not recognize the severity of the offense that we are beginning to see more and more of all the time. With a ten year penalty, it is simply not possible to get an offender in the sexual assault treatment program at the state prison if the person is sentenced to prison. Experts tell us in this area that curing people who commit these kinds of crimes is virtually non-existent, that they are contained and controlled with therapy, but they are not cured. The treatment program that is available at the prison is a good one. Mr. Connor commented that they are trying to get more people into it all the time, but unless the court has the option of passing the sentence that will allow them the time to wait out the entry into the program and complete the program, they just can't get into it. Unfortunately, when someone is sentenced to ten years in prison, they are basically assuming these people are non-dangerous and parole eligible within 2 years or less if they accumulate an average amount of good time.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Hannah, questioning Mr. Connor asked if once they get into the treatment program, if they are able to sustain that treatment program once they leave the institution, that there is a rate of recidivism. Should they do better on the streets or will they have the same problem when they go back on the streets as they did before? Mr. Connor stated that he feels that they do better on the whole. He can't say that no one is ever cured, but thinks statistically cured is not a wide percentage of the results. One of the most important things in terms of getting them better is to admit the fact that they have a problem. Denial is a very common sort of problem with trying to treat sex offenders. Once they have completed the prison program, they are in a much better position to do good with therapy on the outside or afterward with their parole program.

Rep. Eudaily asked if they are talking about inflicting bodily injury upon anyone in the course of committing the crime, the victim only, or are they talking about the victim and possibly someone else? For instance, if a man struck a woman before he committed a crime, are there two crimes committed or will he be charged with only one? Rep. Rice stated that he is not sure why that language is used except that it is the exact language taken from the statute addressing the penalties for the crime of sexual assault. They transferred that language to make the penalty equivalent.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 189

Motion: Rep. Darko made a DO PASS motion, seconded by Rep. Strizich.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED unanimously.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 24, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

January 24, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 189 (first reading copy -- white) do pass .

Signed: _____
Dave Brown, Chairman

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 189 DATE JANUARY 24, 1989

SPONSOR REP. RICE

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Connor	Dept. of Justice	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HEARING ON HOUSE BILL 189

Presentation and Opening Statement by Sponsor:

Representative Jim Rice of Helena, District 43, opened the hearing. He said the bill had been requested by one of his district court judges to cover a discrepancy in statute regarding incest penalties. He said that the bill focuses on situations in which the victim is less than 16 years of age and the offender is 3 years older, or if the victim is bodily injured. The penalty is "not to exceed 10 years and may be fined not more than $50,000", he said, referring to page 2 of the bill. He said that the incest penalty is not as high as the sexual assault penalty. This bill proposes use of the sexual assault language in the incest statute, he said.

List of Testifying Proponents and What Group they Represent:

John Connor, Montana County Attorneys Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor supported the bill. He agreed with Rep. Rice's opening statement. In addition, he said that one reason few people were prosecuted under the incest statute was the relatively light penalty, which does not afford opportunity for appropriate treatment. He said his understanding of the sexual assault treatment program in the prison is that the offender has to be present in the prison for at least 2 years to assure his presence in the program. He said it was a very good program. Normally, a prosecutor is discouraged from prosecution by the lighter penalty. He agreed with the bill.

Questions From Committee Members: Senator Jenkins wondered why these offenders wouldn't be convicted under the child molestation statutes. John Connor said there were 3 options: Sexual intercourse without consent, sexual assault and incest. Normally, he said, with a young child involved, it would be difficult to prove penetration, but may be easier to prove sexual assault. Most sexual crimes occurring in a home are incest offenses.

Senator Jenkins said the child molestation bills were for "under 18" and he wondered why this bill said "under 16". John thought the (molestation) statutes did provide for "under 16," rather than 18. The reason for the different language was for a case where the victim was 15 and the offender was 17, which would not result in a felony sexual assault charge.

Senator Crippen asked if Senator Jenkins was referring to the statute of limitations bills on incest. He said yes.

Senator Jenkins asked about the "age of consent." John said it was 14 for some offenses and 16 for others.

Senator Yellowtail said he understood that, with the provisions of the bill, the treatment would be given. John said that there has to be a sentencing that would afford the opportunity of receiving the 2 or 3 years of treatment necessary for the containment of the problem. He said that sex offenders are never cured, but can be "contained." They need to be seen periodically after treatment for reinforcement. Senator Beck agreed that his understanding of the program at the prison was a minimum of 2 years.

Valencia said she wanted to clarify that, currently, the sexual assault statute is 16 years of age. The bill would be consistent with that, she said.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 189

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Halligan MOVED that HB 189 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 265

Presentation and Opening Statement by Sponsor:
Representative Bill Strizich, Great Falls, District 41, opened the hearing. He said the bill's purpose was to revise and reorganize options for disposition of

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-6-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN			✓
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 189 (third reading copy -- blue), respectfully report that HB 189 be concurred in.

Sponsor: Rice (Mazurek)

BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

scrhb189.396